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No. 82-401

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

BAXTER RICE, INDIVIDUALLY AND AS DIRECTOR OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

EVA REHNER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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This brief is submitted with the accompanying written consent of both parties.

The Agua Caliente Band of Cahuilla Indians, by its undersigned counsel, files this brief *amicus curiae* in support of the position of the respondent on the merits. The

Agua Caliente Band respectfully urges the Court to affirm the judgment of the Court of Appeals, and to hold that Mrs. Rehner, as a member of the Pala Band of Mission Indians and a federally-licensed Indian trader, may sell liquor at her small general store on the Pala Indian Reservation according to California's standards, but without a license issued by the California Department of Alcoholic Beverage Control.

INTEREST OF *AMICUS CURIAE*

The Agua Caliente Band of Cahuilla Indians is a federally-recognized tribe of Indians. Its reservation consists of approximately 31, 346 acres, located in the vicinity of Palm Springs, California. Of this area, approximately 24,314 acres, or 77.57%, are held in trust by the United States for either the Band itself or members of the Band. Approximately 8,828 acres of the reservation, or 28.16%, are located within the City of Palm Springs. The remaining acreage is located in two adjacent cities and in the unincorporated portions of the County of Riverside.

The Agua Caliente Indian Reservation was created by the Executive Orders of Presidents Grant and Hayes of May 15, 1876 and September 29, 1877, respectively, and was patented by the United States by patent no. 168071 to the Band on January 5, 1911, pursuant to the Mission Indian Relief Act of January 12, 1891. The patent declares that the United States "does and will hold the said tracts of land ... for the sole use and benefit of the said Agua Caliente Band or Village of Indians ...".

Soon after the Act of August 15, 1953 (18 U.S.C. §1161, 67 Stat. 586) was passed, the Agua Caliente Band enacted its initial liquor control ordinance on September 24, 1953. That ordinance merely authorizes liquor traffic on the Agua Caliente Indian Reservation if "in conformity with the laws of California." When the opinion of the Court of Appeals in *Rehner v. Rice* became known, the Tribal Council of the Agua Caliente Band, on December 21, 1982, enacted a new Tribal Liquor Control Ordinance, which became effective

on January 7, 1983, the date of its approval by the authorized representative of the Secretary of the Interior and publication on p. 874 of volume 48, no. 5 of the Federal Register. A copy of that ordinance appears as Appendix A.

Under ordinary circumstances, the Agua Caliente Band would view the present litigation with the same interest as do many other Indian tribes, but would probably not seek to make its views known by presenting them as it does now. However, the Agua Caliente Band's interest in the present litigation differs from that of other Indian tribes in that it appears that the California Department of Alcoholic Beverage Control (hereinafter, the "ABC") believes that the Agua Caliente Band poses so much of a threat to the orderly and uniform regulation of liquor traffic on the Agua Caliente Indian Reservation that review of the Court of Appeals' opinion in this Court is justified. As the ABC stated in its petition for a writ of certiorari:

> There is nothing in the Ninth Circuit opinion which limits sales by Indians on reservations to non-Indians nor does the opinion give any consideration to the matter of non-Indian licensees conducting their business on Indian reservations.
>
> In a heavily populated state like California, Indian tribes are not necessarily located in isolated areas. For example, the Agua Caliente Band of Mission Indians and its members control more than 26,000 acres of the Palm Springs area, nearly one-half of the entire city, with the Indian lands interspersed among non-Indian lands in a checkerboard pattern. *Agua Caliente Band of Mission Indians v. County of Riverside* 442 F.2d 1184, 1185 (9th Cir. 1971). Given the size of the population of Palm Springs and the tourists it draws, a substantial proportion of the customers of a retail liquor outlet on Indian land will be non-Indian. Yet on the basis of the Ninth Circuit ruling, it can now be argued that California is prevented from exercising any control over the number and location of these businesses, and the manner in which these businesses are conducted.
>
> Petition for Certiorari, pp. 16-18.

If the Agua Caliente Band were irresponsible and interested only in exploiting the opportunity provided by the Court of Appeals to its purely economic advantage, there might be some grounds for the ABC's fears. However, the Agua Caliente Band, acting through its Tribal Council, is a

responsible unit of local government. It is sensitive to the needs of the entire Palm Springs community, both Indian and non-Indian, and is interested rather in an orderly and carefully drawn regulatory plan for its reservation. To this end, the Band has enacted the above ordinance which places restrictions on the number, location, and identity of its liquor licensees identical to or even more restrictive than those administered by the ABC.

In order to bring the existence of this ordinance, and its particular features, to the Court's attention, the Agua Caliente Band now submits this brief. By doing so the Band seeks to demonstrate that the ABC's fears are groundless and that, on the contrary, the Agua Caliente Band is just as interested in and capable of providing a reasonable and workable system of control of liquor transactions for the Agua Caliente Indian Reservation as is the ABC. As the argument below demonstrates, the Agua Caliente Band has cooperated effectively for over five years with the local non-Indian government regarding the sensitive issue of land use on the reservation, and is equally willing to do the same with the ABC, on the basis of the Band's Tribal Liquor Control Ordinance. Indian tribes in general, and the Agua Caliente Band in particular, do not pose the parade of horrors feared by the ABC. If given the chance, the Agua Caliente Band will use its ordinance as the basis on which to erect a cooperative liquor control system for the Agua Caliente Indian Reservation, one in which the ABC's goal of uniformity of standards is achieved voluntarily on and off the reservation, while preserving the ultimate tribal responsibility envisioned by 18 U.S.C. §1161.

STATEMENT OF THE CASE

The Agua Caliente Band adopts the statement of the case contained in the brief on the merits submitted by Mrs. Rehner.

ARGUMENT

At pp. 80-81 of its opening brief, the ABC points to the Agua Caliente Indian Reservation specifically as the reservation in California where it believes the supposed difficulties flowing from the Court of Appeals' opinion will be most acute.

> Although an Indian retailer may operate his establishment in Indian Country, the effect of the transaction may well be felt outside the country. In a heavily populated state like California, Indian tribes are not necessarily located in isolated [places]. For example, the Agua Caliente Band of Mission Indians and its members control more than 26,000 acres of the Palm Springs area, nearly one half of the entire city, with the Indian lands interest first [interspersed] among non-Indian lands in a checkboard pattern. *Agua Caliente Band of Mission Indians v. County of Riverside* (9th Cir. 1971) 442 F.2d 1184, 1185. Given the size of the population of Palm Springs and the tourists it draws, a substantial proportion of the customers of a retail liquor outlet in Indian country will be non-Indian. There is absolutely no reason why state licensing laws should be applied on one side of the street in Palm Springs and not be allowed to apply on the other side simply because the latter is Indian country. [words in brackets added to make sense of original text]

To show that these fears are entirely unfounded, the Agua Caliente Band wishes to bring the following points to the Court's attention.

I.

THE AGUA CALIENTE BAND HAS ALREADY TAKEN STEPS TO ASSURE THAT LIQUOR TRAFFIC ON ITS RESERVATION WILL HAVE NO HARMFUL EFFECTS, EITHER ON THE RESERVATION OR OFF THE RESERVATION.

As stated in the above Presidential Executive Orders and federal trust patent establishing the Agua Caliente Indian Reservation, the reservation consists primarily of all of the even-numbered sections of land in three

townships, producing a checkerboard effect. Even though the reservation thus consists of alternating 640-acre blocks of reservation and non-reservation land, the Tribal Council is acutely aware of the need for minimizing any friction or discontinuity in essential municipal services occasioned by the transition from reservation to non-reservation status along the reservation's boundary lines, some of which are major streets.

A primary example of the Tribal Council's efforts to voluntarily take the steps necessary to promote a smoothly-running community, in which frequent transitions from reservation to non-reservation square miles of land will make no practical difference to the local non-Indian community, is in the field of land use planning and control. This is a field in which abrupt transitions from Tribal control[1] to City control, particularly from one side of a street to the other, could be particularly disruptive. To understand how the Agua Caliente Band has acted to eliminate such off-reservation effects of unfettered Tribal control of reservation land use requires the following brief background.

Prompted by certain litigation over the question of City control of reservation land use, the Secretary of the Interior, acting under 25 C.F.R. §1.4(b), promulgated an order, published at 30 F.R. 8172 on June 25, 1965, to the effect that, with certain relatively minor exceptions, the City of Palm Springs' land use controls would apply to the lands of the Agua Caliente Indian Reservation. However, the Secretary rescinded this order by another order published at 42 F.R. 32851 on June 28, 1977. In response, the City immediately ceased taking any actions affecting land use of reservation lands. At this point, the Agua

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1. The Court of Appeals has concluded that local governments may not exercise land use controls over reservation lands, while tribes may do so, in *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir., 1975); *cert. denied* 429 U.S. 1038 (1977), which this Court cited with apparent approval in *Bryan v. Itasca County*, 426 U.S. 373, 388, n. 14 (1976).

Caliente Band could have simply exercised its own authority to control reservation land use, without reference to existing uses or plans for the interspersed non-reservation parcels, thus causing precisely the kind of harmful off-reservation effect that he ABC now fears.

However, the Agua Caliente Band did not do so. Instead, it recognized its obligation as a responsible unit of local government to achieve a uniform system of land use and planning throughout the City, while preserving ultimate Tribal authority over decisions regarding reservation lands. Within less than one month from the Secretary's rescinding order, the Agua Caliente Band and the City of Palm Springs voluntarily entered into a contract, a copy of which appears as Exhibit B, by which (1) the Band adopted all of the City's land use controls as the Band's own, (2) the Band designated the City as the Band's agent for the enforcement of those land use controls on reservation lands located within the City, (3) the parties agreed that those dissatisfied with any final action of the City regarding reservation land use could appeal to the Tribal Council, whose decision to affirm, modify, or reverse the City would be final, and (4) either party could cancel the contract on 30 days notice.

By this arrangement, which has been in effect for over five years without abrogation by either party, the Band and the City have achieved a coordinated and unified system of land use control for the entire community. The City administers the same land use controls for all lands within the City, acting under its own authority for non-reservation parcels and as agent of the Band for reservation parcels. In either case, the result of uniform and well-coordinated land use throughout the City is achieved with proper deference to the authority of each local government.

The Agua Caliente Band views the subject of liquor control similarly. It definitely does not wish to exploit the Court of Appeals' opinion to create regulatory chaos and an uncontrolled situation where liquor outlets could proliferate or be located at any location or be operated by

unsuitable persons, as the ABC fears. The Band's ultimate goal is to enter into a cooperative agreement with the ABC, much like the present agreement regarding land use with the City of Palm Springs, by which the ABC would perform the necessary screening, investigatory, and enforcement functions, with final actions subject to an appropriate degree of ultimate Tribal control. The purpose of such an arrangement would be to produce a system by which all those desiring to engage in any form of liquor traffic on the Agua Caliente Indian Reservation would deal directly with the ABC, which would perform all its usual functions, so that there would be no practical difference if such persons were locating their liquor activities on the reservation or off the reservation.

Soon after the Court of Appeals rendered its opinion in *Rehner v. Rice* on June 8, 1982, the Agua Caliente Band took steps to see if the ABC was interested in such an arrangement. The Band invited Mr. Rice himself to attend a meeting with the Band's Tribal Council at which such possibilities could be discussed. This meeting did occur on July 7, 1982. However, Mr. Rice apparently was not sufficiently convinced of the Band's motives or sincerity, since he has not pursued the matter since this meeting.

Still, the Band does not interpret this rebuff from Mr. Rice as an invitation for the Band to embark on a program of unlimited new liquor outlets or tribal licenses being issued to undesirable persons at unsuitable locations. Instead, even without the cooperation of the ABC, the Band desires to install a liquor control system on the Agua Caliente Indian Reservation with standards for these above particularly sensitive points being identical to the ABC's, or even more restrictive, with an existing Tribal body, the Indian Planning Commission and other Tribal staff, performing most of the functions that the Band would prefer to delegate to the ABC by contract.

To this end, on December 21, 1982 the Band's Tribal Council did enact a Tribal Liquor Control Ordinance. As

required by 18 U.S.C. §1161, the authorized representative of the Secretary of the Interior certified it and published it in volume 48, no. 5, page 874 of the Federal Register on January 7, 1983. A copy of the published ordinance appears as Exhibit A.

An examination of the Agua Caliente Band's Tribal Liquor Control Ordinance will reveal that the undesirable off-reservation effects of Tribal control of reservation liquor traffic are eliminated by the ordinance. Under this ordinance, all transactions must comply with the ABC's standards (§5). All present holders of ABC-issued licenses are afforded 5 years in which to dispose of those ABC-issued licenses and obtain equivalent Tribally-issued licenses (§6). The number of new licenses to be available each year will be no greater that that historically issued by the ABC for the same area (§7.1). As for the identity of new licensees and the location of new liquor outlets, the Band will use standards identical to those now employed by the ABC, but the Band may employ even more restrictive standards (§7.2). Other points are handled in the same spirit.

With all these common-sense restrictions in place, there should be no off-reservation effect at all of Tribal control of liquor traffic on the Agua Caliente Indian Reservation. While the Agua Caliente Band cannot guarantee that every Indian Tribe in California will behave similarly, the Agua Caliente Band has now set the model for voluntary and responsible self-restraint in this area, and it hopes that the other tribes will take similar steps. It is hard to imagine what further steps this Tribe, or any Tribe, could take to use its authority under the Court of Appeals' opinion more responsibly for the welfare of the entire community, both on the reservation and off the reservation.

II.

THE AGUA CALIENTE BAND STILL STANDS READY TO ENTER INTO A FORMAL ARRANGEMENT WITH THE ABC BY WHICH THE BAND WOULD DELEGATE MOST OF ITS LIQUOR CONTROL FUNCTIONS TO THE ABC.

Even though Mr. Rice was apparently not impressed by the Agua Caliente Band's initial efforts to negotiate a liquor control agreement similar to the above land use agreement, the Agua Caliente Band is ready and willing to do so at any time the ABC is interested. The Band constructed its Tribal Liquor Control Ordinance with this possibility in mind and made specific provision in that ordinance for doing so:

> During this transition period, the Tribal Council will actively solicit the assistance and support of the California Department of Alcoholic Beverage Control in implementing and, if necessary, amending this ordinance to produce a regulatory scheme for liquor on the Agua Caliente Indian Reservation which will resemble that already in place and operating under the authority of the said Department to the extent feasible, so that the only essential difference between the two schemes will be that the source of licenses will be the Agua Caliente Band, rather than the said department, with issues regarding the number of new licenses, the location of new outlets, the identity of new licensees, the transferability of present and new licenses, the method and conditions of conducting transactions, etc. to be resolved cooperatively so as to produce a tribal regulatory scheme which not only resembles that of the state, as noted above, but is also coordinated with and integrated with that of the Department. One goal of such cooperation will be to eliminate the possibility that any licensee, present or future, will be able to exploit the transition from state to tribal licensing and control to his financial, competitive, or regulatory advantage. To this end, the Tribal Council will seek to enter into a contractual or similar relationship with the said Department by which the Tribal Council would designate the said Department as the Tribal Council's agent for administration of this ordinance, with ultimate control in the Tribal Council, as assisted and supported by the said Department and its staff.
>
> Tribal Liquor Control Ordinance, §6

> 4. *Coordination with interested parties.* In all decisions regarding licensing, the Tribal Council will solicit and give due weight to the views and recommendations of interested local non-Indian governments, the Bureau of Indian Affairs, the California Department of Alcoholic Beverage Control, local and federal law enforcement, and others with a special interest or expertise in the subject. To the extent deemed useful by the Tribal Council, public hearings will be held by either the Tribal Council or the Indian Planning Commission.
> *Id.*, §7.4
>
> *Section 10. Coordination with California Department of Alcoholic Beverage Control*
> The Tribal Council recognizes the experience and expertise of the California Department of Alcoholic Beverage Control in matters regarding liquor transactions. To the extent that that Department is willing to cooperate with the Tribe, the Tribal Council will take all appropriate steps to coordinate its liquor control program and its actions under this Ordinance with the Department, including delegating certain staff and investigative functions to the Department by contract.
> *Id.*, §10

Even if the ABC is not interested in cooperating with the Agua Caliente Band, the Band has extended a standing invitation to the ABC for such cooperation. It is now up to the ABC to accept the offer.

CONCLUSION

It is indeed ironic that the ABC finds it necessary to seek review in this Court of the Court of Appeals' opinion holding that Indian tribes have sole authority to regulate liquor traffic on their reservations. Alcohol abuse is the single largest health problem with Indians across the country. It has devastated the Indian family, has robbed Indians of employment, has diverted limited tribal and individual resources, and has caused untold anguish for Indians and non-Indians alike for centuries in Indian country. The Agua Caliente Band and its members have not escaped the ravages of alcohol.

And yet the ABC does not trust the Indian people, or the Agua Caliente Band, to behave responsibly on this subject. For the reasons noted above, the Agua Caliente Band submits that it has a proven record of voluntary self-control and genuine community spirit, both regarding land use and also liquor. Even without the ABC's cooperation the Agua Caliente Band has acted to regulate reservation liquor traffic almost identically to the way the ABC would regulate it, despite the opportunities for exploitation. This will produce a satisfactory result on this reservation, a result which will have no off-reservation effect, but which could be improved by the ABC's cooperation.

For the above reasons, the Agua Caliente Band urges the Court to dismiss the ABC's unfounded fears, and to affirm the judgment of the Court of Appeals.

Dated: January 24, 1983

Respectfully submitted,

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APPENDIX A

AGUA CALIENTE BAND OF CAHUILLA INDIANS TRIBAL LIQUOR CONTROL ORDINANCE

Section 1. Title

This Ordinance shall be known and referred to as the Agua Caliente Liquor Control Ordinance.

Section 2. Applicability

This Ordinance shall apply to all transactions, as noted below, occurring on the lands of the Agua Caliente Indian Reservation, which are now or may in the future be held in trust by the United States for either the Agua Caliente Band or any individual Indian(s). The Agua Caliente Indian Reservation, as used herein, includes all lands included in the Executive Orders of President Grant of May 15, 1876 and of President Hayes of September 29, 1877, and as patented to the Band by patent no. 168071 issued by President Taft on January 5, 1911 under the authority of the Mission Indian Relief Act of January 12, 1891, plus any additional lands which may be added to the Agua Caliente Indian Reservation in the future.

Section 3. Findings and Purpose

1. The introduction, possession and sale of liquor on Indian reservations have always been clearly recognized as matters of special concern to Indian Tribes and to the United States. The control of liquor on reservations remains exclusively subject to their legislative enactments.

2. Ever since at least 1953, when the Agua Caliente Band enacted its first ordinance on the subject of the application of the federal Indian liquor laws on the Agua Caliente Indian Reservation and the Secretary of the Interior approved that ordinance, the federal government has respected this Tribe's determinations regarding liquor-related transactions and activities on the Agua Caliente Indian Reservation. Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. §1161).

3. Present day circumstances make a complete ban of liquor within the Agua Caliente Indian Reservation ineffective and unrealistic. At the same time, a need exists for strict tribal regulation and control over liquor distribution.

4. The enactment of a tribal ordinance governing liquor sales on the Reservation providing for reasonable restrictions on liquor transactions occurring on the Agua Caliente Indian Reservation will increase the ability of the tribal government to control Reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation of the tribal government and delivery of governmental services.

5. In order to provide for increased tribal control over liquor distribution and possession on the Reservation and to provide for urgently needed additional revenue, the Tribal Council adopts this liquor ordinance.

6. This ordinance is intended to replace, repeal, and supersede the Tribe's previous Ordinance, adopted on September 24, 1953, on the same subject, and this ordinance will do so and become fully effective on the date when it is certified by the Secretary of the Interior, or his authorized representative, and is also published in the Federal Register.

7. Nothing in this ordinance will operate or be construed to limit or restrict the terms of any existing lease of trust land or to impair the ability of the Bureau of Indian Affairs to discharge its duties regarding such leases.

Section 4. Definitions

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

2. **Sale and Sell** includes exchange, barter, and traffic, and also the selling or supplying or distribution by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also includes a sale or selling within the state to a foreign consignee or his/her agent in the state.

2. **Wholesale Price** shall mean the established price for which liquor, beer and wine products are sold to the Agua Caliente Band of Cahuilla Indians or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

3. **Alcohol** is that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of those substances.

4. **Liquor or Liquor Products** includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer) and all fermented, spirituous, vinous or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor or otherwise intoxicating and every liquid or solid or semisolid or other substance patented or not containing alcohol, spirits, wine or beer and all drinks of drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

5. **Spirits** means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen (17%) percent of alcohol by weight.

6. **Wine** means any alcoholic beverage obtained by fermentation of fruits, grapes, berries, apples, et cetera or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen (17%) percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen (17%) percent of alcohol by weight.

7. **Liquor Outlet** means any retail or wholesale business licensed by the Tribe to engage in the on-premises or off-premises sale of liquor, beer, or wine.

8. **Tribe or Band** means the Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe, acting through its duly elected and duly serving Tribal Council.

Section 5. Prohibitions

The introduction, purchase, sale, and dealing in liquor, other than through the licensees of the Tribe, within the Agua Caliente Indian Reservation, is hereby prohibited, except as provided herein.

Federal Indian liquor laws shall remain applicable to any act or transaction which is not authorized by this ordinance and violators of this ordinance shall be subject to federal prosecution as well as to legal action in accordance with applicable law.

Tribally authorized liquor transactions shall comply with California State Liquor law standards to the extent required by 18 U.S.C. §1161.

Section 6. Transition Period

All persons who, from the date that this Ordinance becomes effective and until five years thereafter, hold a valid license issued by the State of California Department of Alcoholic Beverage Control pursuant to California Business & Professions Code §23,000 et seq. may present to the Tribal Council evidence of his or her possession of such license. If the Tribal Council is satisfied that such person does have such a valid license, and if that person also satisfies the Tribal Council that he/she also holds a valid federal Indian trader's license issued pursuant to 25 U.S.C. §261-264 and 25 C.F.R. §251, then the Tribal Council will issue to such person a Tribal license equivalent in scope and duration to that person's previous state-issued license. Each such person shall pay a nominal fee to the Tribal Council for the privilege of the issuance of such an equivalent license in an amount equal to the Tribal Council's administrative expense in processing the request, which amount will be set by resolution of the Tribal Council. Each such Tribal licensee may retain his previously-issued state license or dispose of it as he or she wishes. Such Tribal licenses will be equally available to Indians and non-Indians, members of the Tribe and non-members. If a holder of such a previously-issued state license does not so obtain a Tribal license during the said five-year period,

then he or she will be deemed, at the expiration of that five-year period, to be in violation of this Ordinance.

During this transition period, the Tribal Council will actively solicit the assistance and support of the California Department of Alcoholic Beverage Control in implementing and, if necessary, amending this ordinance to produce a regulatory scheme for liquor on the Agua Caliente Indian Reservation which will resemble that already in place and operating under the authority of the said Department to the extent feasible, so that the only essential difference between the two schemes will be that the source of licenses will be the Agua Caliente Band, rather than the said department, with issues regarding the number of new licensees, the transferability of present and new licenses, the method and conditions of conducting transactions, etc. to be resolved cooperatively so as to produce a tribal regulatory scheme which not only resembles that of the state, as noted above, but is also coordinated with and integrated with that of the Department. One goal of such cooperation will be to eliminate the possibility that any licensee, present or future, will be able to exploit the transition from state to tribal licensing and control to his financial, competitive, or regulatory advantage. To this end, the Tribal Council will seek to enter into a contractual or similar relationship with the said Department by which the Tribal Council would designate the said Department as the Tribal Council's agent for administration of this ordinance, with ultimate control in the Tribal Council, as assisted and supported by the said Department and its staff.

Section 7. Issuance of New Licenses

Subject to the limitations described below, the Tribal Council may issue new licenses, according to procedures and on application forms to be prescribed by resolution of the Tribal Council, for the sale, distribution, and other aspects of liquor transactions according to the categories of such licenses now described by California Business & Professions Code §23,000 et seq. In considering all such applications for new licenses, the Tribal Council will take into account the following factors:

1. **Number of new licenses.** Either by its own research or in cooperation with the California Department of Alcoholic Beverage Control, the Tribal Council shall determine the number of each kind of new license which the said department has historically issued annually for businesses or operations located on the trust lands subject to this ordinance, and will issue no greater number of each such kind of license annually than that historic number.

2. **Identity and location of new licensees.** In selecting which applicants for new licenses will be granted such new licenses, the Tribal Council will employ standards and take into account the same considerations as the California Department of Alcoholic Beverage Control employs, pursuant to California Business & Professions Code §23,000 et seq., for each kind of new license. However, if the Tribal Council deems it desirable to protect the public health, safety, or welfare, it may employ standards or criteria more restrictive than those employed by the California Department of Alcoholic Beverage Control. In no event will the Tribal Council employ less restrictive standards or criteria. In addition, all applicants must present evidence that they hold federal Indian trader's licenses issued pursuant to 25 U.S.C. §§261-4 and 25 C.F.R. §251.

3. **Allocation of new licenses.** If the number of qualified applicants for a kind of license for any year exceeds the number of new licenses of that kind to be issued for that year, the Tribal Council may refer the question of the selection of which applicants will be issued new licenses to the Indian Planning Commission for its recommendation as to which applications, if granted, would be most consistent with principles of sound planning and the public health, safety, and welfare. The Indian Planning Commission's recommendation may be in the form of a ranking of qualified applicants or the results of a lottery conducted according to procedures to be established by resolution of the Tribal Council. In no event will a new or substitute license be issued if such issuance would result in a use of land which violates or is inconsistent with land use regulations established by the Tribal Council, either by contract

with a local non-Indian government or directly by the Tribal Council.

4. **Coordination with interested parties.** In all decisions regarding licensing, the Tribal Council will solicit and give due weight to the views and recommendations of interested local non-local governments, the Bureau of Indian Affairs, the California Department of Alcoholic Beverage Control, local and federal law enforcement, and others with a special interest or expertise in the subject. To the extent deemed useful by the Tribal Council, public hearings will be held by either the Tribal Council or the Indian Planning Commission.

5. **Fees.** In order to maintain the stability of the market in licenses, the Tribal Council may charge a fee for the issuance of a license comparable to that charged in free-market sales of particular kinds of licenses. The amount of the fee to be charged for each kind of license will be determined by resolution of the Tribal Council and will not disrupt the market.

Section 8. Transfers of licenses

Each license issued by the Tribal Council will be freely transferable from person to person and from premises to premises on the following conditions.

1. The application for a transfer must be approved in advance by the Tribal Council and must be accompanied by a non-refundable fee sufficient to defray the administrative expense of processing the application. The amount of the fee will be set by resolution.

2. Transfers of existing Tribal licenses to new persons will be on applications similar to those for new licenses. The Tribal Council and/or the Indian Planning Commission will review such applications under the same criteria and standards as it uses for selecting qualified new licensees.

3. Transfers of existing licenses to new premises will be on application referred to the Indian Planning Commission for its views regarding the suitability of the new premises. In reviewing such applications, the Indian Planning Commission will evaluate the new premises according to the same standards and criteria as it uses for new licenses.

Section 9. Renewals, Suspensions, and Revocations

All licenses shall be issued for a period of one year and shall be automatically renewable on application to the Tribal Council when accompanied by a fee to be set by resolution of the Tribal Council to defray the Tribal Council's expenses in processing an application, the amount of which will be set by resolution of the Tribal Council.

However, a license will not be automatically renewed if any person has raised a serious question as to the violation by the licensee of any California state law standard regarding liquor transactions, or any other matter regarding the suitability of the licensee or licensed premises for a renewal. In such case, the Tribal Council will take such steps as are necessary to investigate, evaluate, and verify the charges, according to procedures to be established by resolution of the Tribal Council, and may impose such conditions, or deny the application for renewal, as the findings may justify.

For charges of serious violations of state standards of behavior or suitability of the licensee or premises occurring during the term of a license, the Tribal Council will take steps similar to those noted above and, as its findings warrant, may suspend or revoke a license on adequate notice and hearing. In all such proceedings, the Tribal Council will solicit the views and assistance of the California Department of Alcoholic Beverage Control, local law enforcement officials, and others with reliable information in order for its decision to be fair to the licensee while still protecting the public health, safety, and welfare.

Section 10. Coordination with California Department of Alcoholic Beverage Control

The Tribal Council recognizes the experience and expertise of the California Department of Alcoholic Beverage Control in matters regarding liquor transactions. To the extent that Department is willing to cooperate with the Tribe, the Tribal Council will take all appropriate steps to coordinate its liquor control program and its actions under this Ordinance with the Department, including delegating

certain staff and investigative functions to the Department by contract.

Section 11. Tribal liquor enterprise

In addition to issuing licenses of various kinds to private parties under this Ordinance, the Tribal Council may, by amendment of this ordinance, establish a Tribal liquor enterprise on such terms and conditions as may be appropriate.

Section 12. Taxes

The Tribal Council may, by ordinance or resolution, levy taxes (excise and otherwise) on the retail and/or wholesale sale of liquor, beer, or wine by licensees under this Ordinance. All such taxes shall be on the buyer, shall be paid by the buyer, shall be collected by the seller, and shall be remitted by the seller to the Tribal Council. All such taxes shall be devoted to the following purposes:

a. Strengthening Tribal government, which shall include but not be limited to, strengthening the tribal justice system enforcing this ordinance.

b. Health, education, and other social service programs.

c. Alcohol and drug abuse community services.

d. Preserving and increasing the Tribal trust land base.

Section 13. Sovereign immunity preserved

Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Tribe. No agent, officer, or employee of the Tribe shall be authorized, nor attempt, to waive the immunity of the Tribe.

Section 14. Penalty

Any person, whether licensee or not, who violates this ordinance, or any part of it, will be deemed to have violated 18 U.S.C. §1161, and will be referred to the appropriate authorities for prosecution.

Section 15. Authority for adoption of Ordinance

This Ordinance is adopted and applied pursuant to Article V, parts (a), (b), (i), (k), and (l) of the Constitution of the Agua Caliente Band of Cahuilla Indians, as amended, approved by the Commissioner of Indian Affairs on April 18, 1957.

CERTIFICATION

The foregoing ordinance was duly adopted and enacted by a vote of 4-0 in favor, -0- opposed, and -0- not voting at a duly called and noticed regular meeting of the Tribal Council of the Agua Caliente Band of Cahuilla Indians at which a quorum was present on the 21st day of December, 1982 at the offices of the Tribal Council at Palm Springs, California.

Barbara Gonzales, Chairman

Moraino Patencio, Vice-Chairman

Richard Milanovich, Secretary

Belinda Sue Short, Member

Gloria W. Gillette, Proxy Member

APPENDIX B

CONTRACT

This agreement is made as of the 26th day of July, 1977, by and between the Tribal Council of the Agua Caliente Band of Cahuilla Indians ("Tribal Council") and the City Council of the City of Palm Springs, California ("City").

I. Statement of Facts

1. The Tribal Council is the legally recognized organized governing body of the Tribe with the authority under its Constitution and By-Laws to enter into this agreement with the City.

2. The Under Secretary of the Interior, effective as of June 28, 1977, issued a Notice (42 F.R. 32851) rescinding the application of the land use regulatory laws of the City of Palm Springs and the State of California to those leased Indian trust lands geographically located within the City.

3. The Tribal Council has the power under its Constitution and By-Laws and in keeping with its powers of self-determination to adopt policies to achieve the highest and best use of Agua Caliente Indian lands, including but not limited to zoning and development thereof.

4. In view of the Under Secretary's Notice, the City, by City Council Resolution No. 12249 adopted on June 29, 1977, has suspended the processing of applications filed on and after June 29, 1977, dealing with Indian trust lands.

5. The suspension of applications in respect to the development of Indian trust land, if not promptly and properly eliminated threatens to impose an unreasonable hardship on the appropriate development of Indian trust land and to irreparably damage the economy of the entire community.

6. Both parties recognize the need for effective planning, zoning, and land use controls with respect to all lands under their respective jurisdiction.

7. The parties desire to make a sincere effort to effectively resolve this problem without delays and in a mutually satisfactory manner.

II. Agreement to the Parties

In consideration of the mutual promises and undertakings hereinafter agreed to, the Tribal Council and the City do hereby agree as follows:

1. Upon execution of this agreement, the Tribal Council shall by ordinance or resolution make applicable to Indian trust lands geographically located within the City the laws, ordinances, codes, resolutions, rules, or other regulations of the State of California and of the City, limiting, zoning or otherwise governing, regulating or controlling the use or development of Indian trust lands within the geographical limits of the City, and the City will resume the processing and, when all is found to be regular and in accordance with applicable laws and regulations, the issuance of all permits pertaining to said Indian trust lands in all ways necessary and proper for the development thereof, which shall include but not be limited to the following:

a. Building and utility permits,
b. Changes of zone,
c. Variances from applicable zoning requirements,
d. Conditional use permits,
e. Planned Development District permits,
f. Tentative and final Tract and Parcel Maps,
g. Changes of amendments to the General Plan,
h. Enforcement of zoning and building codes,
i. Compliance with State and Federal environmental regulations, and
j. Related matters to the above.

2. As further consideration the City of Palm Springs may collect all fees heretofore collected or as the same may be amended and reasonably related to the cost of administering paragraph 1 above.

3. The Tribal Council and the City shall consult with each other regarding all planning and zoning matters affecting Indian trust lands.

4. Any party aggrieved by an action of said City Council in planning and zoning matters as outlined in paragraph 1.a. through 1.j. above, affecting Indian trust lands may appeal to the Tribal Council for relief. Said Tribal Council in accordance with procedures to be established, after notice and opportunity for hearing and on the basis of the entire record, may affirm, reverse or modify any decision of said City Council on a matter affecting Indian trust lands and the decision of the Tribal Council shall be final. In no event shall the Tribal Council act finally on an appeal before meeting jointly with the City Council to review said appeal.

5. This agreement is intended to serve pending the development of future procedures, rules or regulations by agreement of the parties respecting regulation of land use on Indian trust lands geographically located within the City. Joint discussions regarding these matters shall begin not more than 120 days after approval of this agreement. However, either party may terminate this agreement, without prejudice to any legal position thereafter asserted except as hereafter provided, upon thirty (30) days written notice to the other party. In the event of termination of this agreement, any project existing or in process pursuant to previously granted approval by the City shall continue to be bound by the terms and conditions of such approval.

6. This agreement shall be approved by resolutions of the Tribal Council and the City Council.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective authorized officers the day and year first above written.

TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS

By s/Ray Leonard Patencio

CITY OF PALM SPRINGS, CALIFORNIA

By s/Russell J. Beirich, *Mayor*